(65)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No.295 OF 1997

PETITIONER The Associated Cement **Company Ltd.**, Jamul Cement Works **through Senior** Vice-President, Jamul **Cement Works,** Dist. Durg (MP)

Vs.

RESPONDENTS

1. Union of India Through General Manager, South Eastern Railways, Garden Reach, Calcutta – 700043
2. The Chief Operating Manager, South Eastern Railways, Garden Reach, Calcutta 700043
3. The Chief Freight Transportation Manager (I&S), South Eastern Railways, Garden Reach, Calcutta – 700043
4. Divisional Railway Manager, South Eastern Railways, Bilaspur Division, Bilaspur
5. Senior Divisional Operating Manager, South Eastern Railways, Bilaspur.

Writ Petition No.198 OF 1998

PETITIONER The Associated Cement **Company Ltd.**, Jamul Cement Works **through Senior** Vice-President, Jamul **Cement Works,** Dist. Durg (MP)

Vs.

RESPONDENTS

1. Union of India Through General Manager, South Eastern Railways, Garden Reach, Calcutta – 700043
2. The Chief Operating Manager, South Eastern Railways, Garden Reach, Calcutta 700043
3. The Chief Freight Transportation Manager (I&S), South Eastern Railways, Garden Reach, Calcutta – 700043
4. Divisional Railway Manager, South Eastern Railways, Bilaspur Division, Bilaspur (M.P.)
5. Senior Divisional Operating Manager, South Eastern Railways, Bilaspur (M.P.)

Present : Shri Manindra Shrivastava, learned Sr. Advocate with Shri Ashish Shrivastava, learned counsel for the petitioner.
Shri Amit Chaudhari, learned counsel for the respondents/ Railways.

ORAL ORDER
(Passed on 22nd June 2006)

In these writ petitions, the action of the respondents-Railways in recovering certain sums of money as demurrage charges in terms of the Railways Act 1989 has been assailed. According to the petitioners, the demands so made are untenable, highly excessive and contrary to circulars (Annexure P/1 and P/2) issued by the Railways themselves. The Railways have filed return. The petitioners have filed rejoinder to the return. The pleadings placed before the Court would show that in pursuance of the representations made by the petitioners, waiver to an extent of 5% in demurrage charges has been acceded to by the department itself. It is the contention of the petitioners that what has been waived is totally inadequate and contrary to the above circulars issued by the department itself. The claim made by the petitioners has been seriously disputed by the Railways in their return. The factual controversy brought before the Court cannot be resolved satisfactorily on the basis of affidavits and counter affidavits. Perhaps, realizing this position, a request was made by the learned Senior Counsel appearing for the petitioners that the petitioners be permitted to make a comprehensive representation under the 'Time Motion Study' to the Divisional Railway Manager, Bilaspur, because, he is empowered to grant waiver to an extent of more than 5% of the demurrage charges.

(2) In that view of the matter, leaving open all contentions raised by the parties in their respective pleadings before this Court in these writ

petitions to be agitated before the Divisional Railway Manager, I dispose of these writ petitions permitting the petitioners to make a comprehensive representation/application under the 'Time Motion Study' to the Divisional Railway Manager. If such representation/application is made by the petitioners within a period of one month from today, the Divisional Railway Manager shall consider the same under the 'Time Motion Study' and in terms of the relevant circular issued by the Railways from time to time and after providing hearing to the authorized representatives of the petitioners. The dispute between the parties is pending for quite long time. It is trusted that the Divisional Railway Manager would consider and dispose of the application of the petitioners, as expeditiously as possible, at any rate, within a period of six months from the date of submission of the application/representation. The parties shall bear their respective costs in these writ petitions.

Sd/-
Chief Justice

Kamde